

No. 12,038

In the United States Court of Appeals
for the Ninth Circuit

JOHN E. HUMES, APPELLANT,

vs.

ALASKA TRANSPORTATION COMPANY, A CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON, NORTH-
ERN DIVISION

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the United States District Court for the Western District of Washington, Northern Division, Honorable John C. Bowen, District Judge, (R. 3-6, 72-75) is not yet reported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1291 by a notice of appeal allowed and filed August 11, 1948 (R. 9), from a final order of the United States District Court for the Western District of Washington entered May 17, 1948 (R. 7-8).

The jurisdiction of the District Court was invoked under 28 U.S.C. 1333(1) by a petition under Admiralty Rule 42

for restoration of a seaman's wages deposited into registry of court pursuant to R.S. 4604 (46 U.S.C. 706).

STATUTES AND RULE OF THE COURT INVOLVED

The pertinent provisions of the statutes are set forth in the Appendix A, *infra*, pp. 20-23.

Admiralty Rule 42 appears in the argument, *infra*, p. 5.

QUESTIONS PRESENTED

1. Whether the operating owner of a vessel is a necessary party to a proceeding by a seaman under Admiralty Rule 42 for restoration of wages deposited into registry of court pursuant to R.S. 4604 (46 U.S.C. 706).

2. Whether on a petition under Admiralty Rule 42 for restoration of wages deposited into registry of court, the burden of proving absence of desertion is on a petitioner who left his ship without permission, made no attempt to rejoin her and was properly logged as a deserter in accordance with R.S. 4596 and 4597 (46 U.S.C. 701-702).

3. Whether in the special circumstances of the case the district court erred in mitigating the forfeiture, pursuant to R.S. 4596 (46 U.S.C. 701) and R.S. 4610 (46 U.S.C. 711), by reducing it to \$200.00.

STATEMENT

This was a petition, pursuant to Admiralty Rule 42, by John E. Humes, a former member of the crew of the *MS Clove Hitch*, a vessel operated by Alaska Transportation Company, for restoration of wages deposited into registry of court, pursuant to R.S. 4604 (46 U.S.C. 706), as a result of the vessel's master having logged him as a deserter as required by R.S. 4596-4597 (46 U.S.C. 701-702). The petition was oral, contrary to the plain intention of Rule 42, and no copy of the petition was served on the United States as required by the Rule. Although petitioner was bound to know by the plain language of the statutes (R.S. 4604 and 4545; 46 U.S.C. 706, 628) that the United States was the adverse party to his claim within the meaning of Rule 42, he ignored the Government in pretended reliance upon an alleged "custom" that the

status of the United States as the indispensable adverse party might be ignored contrary to the statute and the Admiralty Rule.¹

Testimony was taken on two different days (R. 16, 31). On the first day the entries in the official log book required to establish the charge of desertion were introduced (R. 18-19) and the testimony of the petitioner taken (R. 25-28). On the second day representatives of the operator appeared pursuant to an informal request by the district court "to present any testimony they so desired * * * to give testimony if they wanted to as well as the seamen" (R. 31). The petitioner testified again (R. 32-43) and the operator, pursuant to the court's request, offered the testimony of its personnel manager (R. 43-71). Although in the course of this testimony the court referred to the operator as "respondent," at no time did the operator enter any formal appearance in the case nor file any pleadings whatsoever. After receiving evidence, the district court adjudged the moneys in registry forfeited to the United States. Exercising the discretion granted by R.S. 4596 (46 U.S.C. 701) and R.S. 4610 (46 U.S.C. 711), to reduce the penalty to an amount not less than one-third the original amount, the district court directed the forfeiture of \$200.00 to the United States and the restoration of \$153.86 to the petitioner.

While the district court in its opinion, as in the course of the taking of the personnel manager's testimony, speaks (R. 3) as if petitioner and the shipowner were adverse parties, it does not appear that he treated them as such. No costs were awarded the operator and the order of judgment was submitted by counsel for the petitioning seaman.

The petitioner was dissatisfied with the action of the district court and the appeal to this Court followed.²

¹ The district court also failed to give notice to the United States of the pendency of the proceeding, but on the contrary proceeded entirely *ex parte*.

² Instead of being entitled "*Humes v. A certain fund in registry*," or "*In re Humes*," as has been the past practice in similar cases (see e.g. *In re Williams*, (4th Cir., 1943) 139 F. 2d 262), the case has been entitled "*Humes v. Alaska Transportation Co.*," although the latter firm has no interest in the matter and has made no claim of any kind in the proceedings.

ARGUMENT

I

Petitioner and the United States Are the Only Claimants to the Fund under the Statute and the Only Real Parties in Interest; No Basis for Requiring the Presence of the Vessel Operator Is Disclosed

Once the master or owner of a vessel has accounted for and turned over to the shipping commissioner, in accordance with R.S. 4604 (46 U.S.C. 706), the wages and effects of a seaman who left the ship and did not return and whom he was therefore required to log as a deserter in accordance with R.S. 4596-4597 (46 U.S.C. 701-702), the interest of the master and owner in the matter ends. Only the United States and the seaman, the two competing claimants to the fund, remain concerned.

Having complied with the provisions of the statute and relieved themselves of liability to penalties for non-compliance, the master and owner have no further interest. In no event can they receive any benefit from the disposition of the fund, whether forfeited to the United States or restored to the seaman. The only party, other than the seaman, with any interest in the matter is the United States as responsible for enforcement of the penalty and, secondarily, as the custodian of the fund for the relief of seamen. The presence in the proceedings of the shipowner who is not a party in interest is neither necessary nor proper but is highly undesirable. Alaska Transportation Company should not have been treated as in any respect a respondent below and ought now to be dismissed by this Court. As it has asked to be dismissed, the United States is not obliged to make a similar motion.

A. The seaman's petition is but another instance of a claim under Admiralty Rule 42 (see, *infra*, p. 5) to a fund held in registry. It differs in no respect from any other claim under Rule 42 nor from the similar claim to the fund consisting of the wages and effects of a deceased seaman deposited pursuant to R.S. 4538-4539, 4541-4543 (46 U.S.C. 621-622, 624-626). Indeed, R.S. 4604 (46 U.S.C. 706) specifically directs that the same procedure is to be followed.

Rule 42, prescribing the procedure for asserting claim to proceeds in registry, with emphasis supplied, provides:

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceedings, to intervene pro interesse suo for delivery thereof to him, and on due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice.

There is clearly no basis for contending that a seaman who has abandoned his ship without leave is not within the expression "any person," the proceeds of the seaman's wages and effects within the meaning of "any proceeds in registry" and the United States as claimant of the fund the sole or at least the chief of the "adverse parties" to whom notice must be given. Suggestions that some different procedure should be prescribed by local rule of court are therefore footless. (See Appt's memo. on motion to dismiss, p. 6).

Like all petitions for proceeds in registry, a copy of the seaman's petition should, if possible, be served upon any party having an adverse interest. Cf. 3 Benedict, *Admiralty*, (6th ed., 1940) p. 283. But the court must adjudicate the rights of the claimant to the fund even though the United States fails to appear and object to his petition. *In re Zanicki*, (D. Mass., 1946) 65 F. Supp. 447; *In re Holmberg's Estate*, (N.D. Calif., 1912) 193 Fed. 260; cf. *Rostron v. The Water Witch*, (S.D. N.Y., 1890) 44 Fed. 95; *Dent v. Radman*, (E.D. N.Y., 1880) 1 Fed. 882, 889. See 3 Benedict, *Admiralty*, (6th ed., 1940) §§ 452-453. But where the petition is met by formal objection on the part of the Government or a claim that the fund is forfeited or escheated to the United States is made, the matter will not be disposed of in summary proceedings but should be set down for more formal hearing. *In re Myers*, (S.D. N.Y., 1948) 74 F. Supp. 154. Moreover, any other party besides the United States who claims an interest in the fund may also file a petition or intervene. Cf. *In re Mitchell*, (D. Ore., 1948) 84 F. Supp.

871; *In re MacDonald*, (S.D. N.Y., 1917) 248 Fed. 983; *In re Johnson*, (S.D. N.Y., 1916) 251 Fed. 319.

The affirmative interest of the United States in the fund in registry is expressly declared in R.S. 4604 and 4545 (46 U.S.C. 706, 628) and has been repeatedly recognized. Thus *In re Buckley*, (D. Mass., 1929) 33 F. 2d 615, 616, where a public administrator claimed the wages of a deceased seaman deposited in registry, holds that "If unclaimed, it ought to go * * * into the fund to help other seamen who are ill or disabled." See also *In re Escheat of Moneys*, 1948 A.M.C. 264, 358 Pa. 133, 57 A. 2d 256. And the duty of the United States Attorney to proceed in the matter has long been recognized. See 14 Op. A. G. 520, 521; 1 Comp. Gen. 557. In *United States v. Grant*, (D. Mass., 1914) 224 Fed. 644, the United States sued for the return of certain amounts deducted from the wages of deceased seamen deposited in the court's registry. And in *Stevenson v. Hare*, (N.D. Calif., 1874) 23 Fed. Cas. No. 13,416, the right of the United States, as represented by the shipping commissioner, to recover for moneys and penalties not turned over by the shipowner is clearly recognized.

B. Normally, of course, the United States, to whom the fund is forfeited or escheats, is the sole interested party besides the petitioner. Thus it is only to the Government's representatives—the shipping commissioner (who has custody of the shipping articles and the official log, including petitioner's wage account) and the law officers of the Government, the Attorney General and the United States Attorney (who are charged with protecting the Government's interest in the fund)—that notice of petitioner's claim to the fund in registry must be given.

There would seem to be no doubt that other parties may be cited, although ordinarily no others are interested and are under no obligation to appear.³ Anyone with an actual

³ Cf. *In re Mitchell*, (D. Ore., 1948) 84 F. Supp. 871, where the operating company claimed the right to recover maintenance out of the fund. One of the many undesirable aspects of participation by the operating companies is that they have often attempted to influence masters to waive desertion and thus settle the claim to the prejudice of the United States to whom the forfeiture belongs.

interest in the fund in registry may intervene at any time. *The Hammond*, (S.D. Fla., 1926) 17 F. 2d 118; *The Com-mack*, (S.D. Fla., 1925) 3 F. 2d 704; *The Mary Anne*, (D. Me., 1826) 16 Fed. Cas. No. 9,195; *Schuchardt v. Ship Angelique*, (1856) 19 How. 239, 241. But the law is settled that one who, like the ship operator, "has merely a collateral interest in some question involved in the suit and has no actual concern in the subject-matter of it, cannot be allowed to intervene in the proceedings." *The Lottawanna*, (1873) 20 Wall. 201, 222; *The Cartona*, (2d Cir., 1924) 297 Fed. 827.

It does not seem that the cases of *In re Williams*, (4th Cir., 1943) 139 F. 2d 262; *In re Zanicki*, (D. Mass., 1946) 65 F. Supp. 447, and *In re Mitchell*, (D. Ore., 1948) 84 F. Supp. 871, relied on for the view that the operator is a necessary and proper party, constitute, when examined, any authority for holding that a private operator is a proper party except in the exceptional circumstances where he makes a claim to the fund adverse to that of the petitioner and the United States. In the *Williams* case (the only one of the three cases not involving a vessel owned and operated by the United States) the report discloses that the operator did not appear on the appeal and similarly in the district court, "although given notice of the petition and of the hearing, did not appear and was not represented" (139 F. 2d at 262).

The rule that the operator is not a proper party is not controverted by the government vessel cases. In the *Zanicki* case the reference to giving notice to the Government's ship master as well as to the other government representatives is insufficient to establish that where privately operated vessels are involved notice must or even should be given the private operator.⁴ In the *Mitchell* case, although the report refers to a claim of the "owners," that

⁴ The opinion states that the vessel involved, SS WILLIAM PACA, was operated by Calmar Steamship Corporation. In fact, however, the vessel was owned and operated by the United States and Calmar was only ship's husband or shoreside business agent of the United States while the master was a civil-service employee of the United States.

vessel too was owned and operated by the United States. The New York office of the Admiralty and Shipping Section of the Department of Justice had negotiated a suggested settlement of the case to be submitted by the local United States Attorney for the court's consideration and approval. What the opinion refers to as letters from the "owner" appear to have been letters from the claim office of the ship's husband or general agent which the United States employed to attend to the vessel's accounting and other shoreside business. No claim was submitted by the "owner" because it had already been taken into account by the law officers of the United States in negotiating the settlement and the agent's claim department could appear only through them. Cf. *United States v. Moran*, (S.D. N.Y.) 1946 A.M.C. 1530.

It thus appears that in no reported case was a private shipowner actually represented before the court despite any obiter remarks about its role in such proceedings. But apparently from fear that the court's finding on the seaman's petition under Rule 42 might adversely affect decision of a possible later suit by the seaman against the shipowner,⁵ and in hope of buying peace from such a suit by the deserter by aiding him in having the charge of desertion removed, shipowners have recently attempted to participate in the proceedings.

Ordinarily the position of the operator is hostile to the United States and favorable to the seaman and this improper practice now appears to have become so common as to have been by some accepted as permissible. Inquiry by the Department of Justice has disclosed, however, that in many courts the practice has grown up that instead of insisting that the seaman serve copies of his petition on the United States as required by Rule 42 and give notice of the seaman's petition to the deputy shipping com-

⁵ It is obvious, of course, that decision on the seaman's petition for the fund in registry, being a suit in rem, cannot be *res judicata* between the seaman and the shipowner unless the latter joins issue with petitioner. Cf. *The Nevada*, (9th Cir., 1926) 11 F. 2d 511, 513; *The Ethel*, (5th Cir., 1895) 66 Fed. 340, 342; *The Monte A*, (S.D. N.Y., 1882) 12 Fed. 331, 333.

missioner, the United States Attorney and the Attorney General, as is necessary to enable the Government to protect its interest in the fund, notice is given only to the shipowner. who, if not disinterested, is hostile to the forfeiture to the Government.

Reports have even been received that, in clear violation of 18 U.S.C. 283, district court clerks have often aided deserters in preparing and having considered ex parte, petitions for restoration predicated on letters from masters and operators that *they* (not the United States) desired to "waive" the forfeiture. It seems obvious that the master, like any other complaining witness in a forfeiture proceeding, has no authority to decide whether the United States will enforce or waive the penalty. Clerks and masters are but exposing themselves to criminal prosecution. But so serious is the confusion that in the case of *In re Williams*, (4th Cir., 1943) 139 F. 2d 262, 263, the court held not only that the seaman did not have the burden of proof to overcome the inference of desertion arising from his quitting his ship and never returning, but that the burden was on the *shipowner* to prove the seaman's subjective intent at the time he left.⁶

C. In the present case, however, Alaska Transportation Company merely accepted the invitation of the judge to offer testimony in the proceedings, while asserting no claim to the fund, as a public service to aid in the proof of the facts, and now finds itself regarded as a party. But its presence has occasioned no harm—unless proof of the truth be so regarded. The United States submits that it is entitled to insist upon the dismissal of the shipowner as improperly joined. But, as it appears that the owner now desires to proceed no further and likewise seeks dismissal,

⁶ This position ignores the fact that the shipowner, once having escaped the penalty to the United States by turning over the deserter's wages and effects to the shipping commissioner, is often only too happy to condone the deserter's conduct so as to escape harassment by the deserter and his union. Since the *Williams* case the matter has been corrected in the Fourth Circuit and the Government is now permitted to protect its interests in cases at Norfolk and Baltimore.

any possible controversy is removed. Having appeared voluntarily there may be doubt as to its right to recover costs against appellant, but as it asks none, there would seem to be no problem. It should be dismissed in accordance with its request.

II

Petitioner Having Abandoned His Ship So As to Compel the Master to Cause His Wages and Effects to Be Deposited in Registry, the Burden of Proving That He Did Not Desert Was on Petitioner and the Court Below Correctly Held He Failed to Sustain It

The present proceeding is analogous to any other petition under Admiralty Rule 42 to obtain possession of funds held in registry. The burden is thus upon the seaman as on every other claimant of funds in registry to establish by proper evidence the claim stated in his petition. He must allege and prove that when he abandoned his ship he did not intend to desert although he left the vessel and failed to return before the end of the voyage.

The fact of petitioner's continued absence without leave is proved by the entries, required to be made in the official log book under penalty by R.S. 4597, 4292 (46 U.S.C. 702, 203) and the pay-off copy of the shipping articles, both of which it was the duty of the deputy shipping commissioner to produce and which were made available to the court here. Under 28 U.S.C. 1732 and R.S. 4597 (46 U.S.C. 702), these official documents, made in the regular course of the ship's business under penalty of law, stand as uncontroverted evidence of the events and transactions stated therein.⁷ In the nature of the matter they leave open to dispute only the subjective intention of the petitioner in continuing to absent himself from the vessel or his explanation of his inability to return. But, as such matters are exclusively within the

⁷ Compare British Merchant Shipping Act, 1854, Appendix C. *infra*, pp. 28-31. See *The Ariel*, (2d Cir., 1941) 119 F. 2d 866; *Malone v. Bell*, (D. Pa., 1805) 16 Fed. Cas. No. 8,994; *Douglass v. Eyre*, (E.D. Pa., 1830) 7 Fed. Cas. No. 4,032, at p. 978.

knowledge of petitioner, he, as the moving party, not the United States, must bear the burden of their proof.

A. Revised Statutes 4596 (46 U.S.C. 701(1)) provides that a seaman shall be punished for desertion "by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned." The statutes prescribe a special procedure for enforcement of this penalty by payment into registry followed by adjudication of the question of desertion by the court when the seaman petitions for restoration of the proceeds in registry. The successive steps in this statutory procedure are as follows: *First*, R.S. 4597 (46 U.S.C. 702) requires entry of the desertion to be made by the master and mate "in the official log book on the day on which the offense was committed" in order that "in any subsequent legal proceedings the entries * * * shall * * * be produced or proved," *Second*, R.S. 4604 (46 U.S.C. 706) requires that the seaman's effects and wages thus forfeited must, under penalty of double the amount thereof, "be paid by the master or owner to any shipping commissioner resident at the port at which the voyage of such vessel terminates," who in turn must deposit them into registry of court for disposition, and *Third*, R.S. 4545 (46 U.S.C. 628) prescribes the method of disposition by the court and authorizes the making of a claim for their restoration.

Nothing in the statutes supports appellant's view that any discretion as to the extent of the forfeiture lies with the master or owner. On the contrary, reading R.S. 4596 (46 U.S.C. 701) with R.S. 4610 (46 U.S.C. 711), it is clear that courts alone are granted the power of mitigation. In its original form in the 1874 Revised Statutes, R.S. 4596 as derived from section 51 of the 1872 Act (*infra*, p. 25), also contained a provision for imprisonment, yet it may be doubted that appellant would then have the hardihood to suggest that imprisonment was in the discretion of the master. Certainly no case has ever held that the master might exercise discretion and turn over to the shipping commissioner as forfeited any smaller amount than the full

wages due the seaman less the deductions for expenses as permitted by the statute (R.S. 4604; 46 U.S.C. 706).⁸

Prior to the adoption of the 1874 Revised Statutes there was no possibility of dispute respecting the procedure for enforcement of the penalties for desertion. Nor was there opportunity for such errant nonsense as appellant's assertion that the burden is not on the petitioning seaman to prove that when he abandoned his ship and never attempted to return, still he lacked the *animus non revertendi* essential to desertion. Unexcused absence of a seaman, exceeding forty-eight hours, duly entered in the official log and crew list and duly authenticated before an American consul abroad, or a notary public at home, was explicitly declared prima facie proof of desertion and of the forfeiture of the seaman's wages and effects to the United States. By Section 5 of the Seamen's Act of 1790 (Appendix B, *infra*, pp. 23-24) such forfeiture was expressly prescribed for absence continuing more than forty-eight hours, provided the entries required under penalty of law were made in the log book kept by the vessel. *The Union v. Jansen*, (S.D. N.Y., 1837) 24 Fed. Cas. No. 14,348 at p. 546; *Cloutman v. Tunison*, (D. Mass., 1833) 5 Fed. Cas. No. 2,907 at p. 1094; see *The Martha*, (S.D. N.Y., 1830) 16 Fed. Cas. No. 9,144 at p. 861. By Section 25 of the Diplomatic and Consular Act of 1856 (Appendix B, *infra*, pp. 24-25) the law of 1790 was supplemented and amended by giving the forfeiture to the United States, instead of to the shipowner as provided by the 1790 Act, and by requiring the entry of the continued absence to be

⁸ As the Attorney General ruled in the early days of the 1872 Act, the property is "held by the master as forfeited, and the law forbids the master or owner of the vessel to keep it, but directs that it shall be held by the judge * * * The law does not require that there shall be an actual judgment of forfeiture before it becomes the duty of the master to pay over to the shipping commissioner. If it were so, there would seldom be a case of forfeiture, and the fund for disabled seamen would not be benefited largely from this source" (14 Ops. A. G. 520, 521). Were a master to attempt to remit any part of the forfeiture and not deposit the full amount, there is no doubt that suit for the amount withheld and penalties would be instituted on behalf of the United States. Cf. *Stevenson v. Hare*, (N.D. Calif., 1874) 23 Fed. Cas. No. 13,416.

made and authenticated upon the crew list, an official document required to be deposited with the collector upon entry of the vessel. Finally, the Shipping Commissioner's Act of 1872 (Appendix B, *infra*, pp. 25-27) further amended the Acts of 1790 and 1856 by prescribing that an *official* log was to be kept in which entry of desertion was to be made and commanding the master or owner to turn over the seaman's wages and effects to the shipping commissioner at the port of discharge, who should deposit the proceeds promptly into registry of court.

The absence of any intent on the part of the draftsmen of the 1872 Act to repeal the earlier Acts of 1790 and 1856 is obvious not only from this internal analysis of their several provisions, but also from the legislative history. It is traditional that the purpose of the 1872 Act was to reproduce in American legislation such provisions of the British Merchant Shipping Act of 1854 as were not already covered by existing United States statutes.⁹ The failure to include any provision corresponding to Section 250 of the British Act (Appendix C, *infra*, p. 29), regarding proof of the statutory conditions for forfeiture, thus shows plainly that the draftsmen regarded Section 25 of the 1856 Act as still remaining in force. Had the 1856 Act been intended to be repealed, something like Section 250 would have been enacted in its place. Without such a provision the internal economy of the body of statutory law would have been destroyed.

The Acts of 1790, 1856 and 1872 when thus all read together constituted a harmonious and workable whole. The rights and duties of the respective parties—the owner and master, the absent seaman, and the United States—were simple, certain and easily understood. The Commissioners who prepared the Revised Statutes, however, mutilated this workable system created by reading together the Acts of 1790, 1856 and 1872. They omitted the Acts of 1790 and 1856 without inserting into the 1872 Act's provisions those parts of the earlier statutes necessary to make

⁹ See statements made and letters read during debate on the bills, 89 Cong. Globe 1206, 102 Cong. Globe 1836, 2174, 2207.

the statutory scheme easily workable and understandable.¹⁰ But while these omissions seem obviously to have been erroneous we do not urge this Court to attempt their resuscitation now. In view of the general revisions effected by the Acts of December 21, 1898, c. 28, 30 Stat. 760, and March 4, 1915, c. 153, 38 Stat. 1147, it might be questioned if the matter is still open.¹¹

The Revised Statutes as amended and now in effect are still workable provided they are construed in the light of their history. Thus construed it is obvious that, although the certainty of the forty-eight hour absence fixed by the 1790 Act is gone, a seaman's continued absence without leave when it extends for an unreasonable time still establishes *prima facie* desertion susceptible of being proven by the succession of daily entries in the log which the ship's officers are required to make under penalty. When thus established, the master is obliged at the voyage end, again under penalty, to turn over the absent seaman's wages and effects for deposit into registry where they stand forfeit to the United States unless the seaman on his petition claiming their restoration shall plead and prove that his apparent desertion was not such in law because he did not have the *animus non revertendi*, but, on the contrary, always intended to return to the ship.

Where relevant, as in cases where desertion is denied or mitigating circumstances are invoked, it is logically obvi-

¹⁰ Sec 2 Commissioner's Drafts (1872) pp. 2205, 2209 (titles 51-57, Commerce and Navigation, pp. 229, 233). This may have been done on the basis of Judge Lowell's decision in *Scott v. Rose*, (D. Mass., 1874) 21 Fed. Cas. No. 12,545, referred to by Judge Addison Brown without approval in *Welcome v. The Yosemite*, (S.D. N.Y., 1883) 18 Fed. 383, and *Brink v. Lyons*, (S.D. N.Y., 1883) 18 Fed. 605, that the 1872 Act repealed that of 1790. There is certainly slight basis for Judge Lowell's construction when we note the insufficiencies of the 1872 Act when read alone and consider the rule that repeals by implication are not favored.

¹¹ It must be recognized, however, that the legislative history of neither of those revisions suggests there was any consideration of the question of forfeiture. Both were solely concerned with the reduction and final elimination of imprisonment for desertion.

ous that this proof of petitioner's subjective state of mind and of his intervening whereabouts must rest wholly upon himself. Ordinarily, he is the sole source of any information. No one but the petitioning seaman can ever offer anything better than remote circumstantial evidence. See *Spencer v. Eustis*, (1842) 21 Me. 519, 38 Am. Dec. 277; *In re Murphy*, (S. D. N. Y., 1947) 73 F. Supp. 710.

B. Petitioner's reliance on cases like *The City of Norwich*, (2d Cir., 1922) 279 Fed. 687, 698, is unfounded. That case, like the case of *The Two Sisters*, (1843) 2 W. Rob. 125, 138, 166 Reprint 702, upon which it in turn relies, was not a petition for proceeds deposited in registry because the seaman abandoned his ship and never rejoined. In both cases the seamen sued the shipowners and the latter admitted the seamen's allegations but pleaded as a defense that the wages were forfeited for desertion. In both the plaintiff seamen had gone ashore without leave and their claim was that when they returned the master excluded them from the ship so that they were wrongly discharged. In such circumstances it is obvious that proof of desertion fell upon the shipowner who pleaded it as a defense.

Nor does *In re Williams*, (4th Cir., 1943) 139 F. 2d 262, really help petitioner. When examined, far from being an authority for petitioner, the case appears merely to indicate the danger of unguarded dicta in opinions written without the court having the benefit of briefing and argument by the United States as well as the petitioning seaman. In both courts the entire proceeding was *ex parte*; the Department of Justice apparently first learned of the case from its publication in the Federal Reporter. Although the United States was the only interested party, it was not cited or served with a copy of the petition, had no notice and did not appear in either the district or the appellate court. The operating company, although it had no legal interest, wrote a letter to the court. And it was on the strength of this slender act that the court made the statement, relied on by appellant here, that "The burden to prove desertion rested on the shipowner * * * but no proof was offered on its behalf" (p. 263). The court's

statement is plainly erroneous. Moreover, the report shows that in fact the petitioning seaman's testimony more than sustained his burden of proof although the dictum of the court appears to relieve him of it.

Thus, in reality, neither case is authority for appellant's contention that a seaman who abandons his ship and never returns to her must be awarded the fund in registry upon his mere demand unless some other party appears and proves that his subjective intent amounted to an *animus non revertendi*.

C. The correct rule is fully explained by analysis of the relation of the parties to the different types of litigation and what they must plead and prove. As pointed out in *In re Zanicki*, (D. Mass., 1946) 65 F. Supp. 447, 449, if the seaman contends he did not desert, he may litigate the question either by suit against the shipowner or by a petition under Rule 42, claiming the proceeds of his wages and effects held in registry of court. The burden of proof depends upon which course the seaman elects and on what defense the shipowner interposes.

If the seaman chooses to bring suit against the shipowner for his wages and the owner pleads as a defense the seaman's desertion and forfeiture of wages, the shipowner must prove the desertion and forfeiture which he has pleaded. *The City of Norwich, supra*; cf. McKelvey, *Evidence*, (5th ed., 1944) p. 95, n. 4. If the seaman sues and the owner pleads, instead, only the seaman's continued absence without leave, whereby the master was required, under penalty of law, to log him as a deserter and to turn over all his wages and effects for deposit in registry, the shipowner must prove the facts which he has thus alleged as a defense and no more. The owner will be dismissed and the seaman remitted to his claim for the proceeds held in registry as forfeited to the United States.

While no American case appears to have discussed the point, it seems self-evident that on such a defense the shipowner will be dismissed if he prove no more than the plaintiff's continued absence and full payment into registry as required by law. Under the British legislation, from which

our own is copied,¹² the distinction between the two cases was well settled over a hundred years ago and is no longer litigated. When the master, in accordance with the statute, turns over the wages and effects of a seaman logged as a deserter or of one who died at sea, it is a valid discharge to the extent of the payment but does not, of course, bar suit and recovery for any amount the master had not paid over. *The Vibilia*, (1829) 2 Hagg 228, 166 Reprint 227; *Armstrong v. Smith*, (1805) 1 Bos. & Pul. (NR) 299, 127 Reprint 477. If the defendant proves full payment as required by the statute, he is dismissed. But if the plea is desertion rather than disposition according to the statute, the defendant shipowner must prove actual desertion and nothing short of it will do. *Frontine v. Frost*, (1802) 3 Bos. & Pul. 302, 127 Reprint 167, explained in *The Baltic Merchant*, (1809) 1 Edw. Ad. 86, 165 Reprint 1041.

But the burden of proof is otherwise when the seaman comes to petition for the restoration of the proceeds of his wages and effects held in registry; the burden of proof is then reversed. He is the moving party and must prove that he is entitled to the fund in registry. The seaman, who leaves his ship and abandons his wages and effects, so that the master, under penalty of the law, must turn them over to the shipping commissioner for deposit into registry, when he petitions for their restoration has the whole burden of proof. The seaman, not the shipowner, must prove that his apparent desertion, in fact, was not desertion, in law, because he had the *animus revertendi*. This is so because in neglecting to return before the pay-off the seaman has placed himself in the position of the moving party in seeking his wages and as such must bear the

¹² See statements in the Congressional debates, *supra*, p. 13, fn. 9. For the successive development of the British legislation respecting disposition of wages of seamen deserting or dying, see 11 & 12 Will. III, c. 7, s. 17 (1700); 2 Geo. II, c. 36, ss. 3, 6, 9 (1729); 37 Geo. III, c. 73, ss. 1, 7-9 (1796); 4 Geo. IV, c. 25, ss. 9-11 (1823); and 5 & 6 Will. IV, c. 19, ss. 9, 25, 53 (1835), culminating in the Merchant Shipping Act, 1854, 17 & 18 Vict., c. 103, which formed the basis in the United States of the Shipping Commissioner's Act, 1872, 17 Stat. 262.

burden of proof. Unlike the cases of the seaman's suits against the owner, who if he once admits owing the wages is under the burden of explaining why he should not pay them, the presence of the seaman's wages in registry shows he once abandoned them and if he wants them must now explain why he is entitled to them.

No American decision except the *Williams* case, which we believe is clearly erroneous, has discussed the burden of proof. We believe, however, that every other reported case shows that the court treated the seaman as having the burden as the petitioning party. See esp. *In re Murphy*, (S.D. N.Y., 1947) 73 F. Supp. 710; *In re Mitchell*, (D. Ore., 1948) 84 F. Supp. 871; *In re Magdaloyo*, (S.D. N.Y.) 1948 A.M.C. 1896. And even the *Williams* case shows that petitioner had in fact fully satisfied that burden.

Turning to the facts of record in the present case there appears no doubt of the complete correctness of the decision of the court below. The testimony of petitioner, even when favorably presented in appellant's brief, falls far short of justifying his quitting his ship and flying to Seattle. The district court had the advantage of observing the witness' demeanor and its findings in admiralty as at law should not be disregarded unless clearly erroneous, which they plainly are not.

III

The Court's Action in Mitigating the Penalty So As to Forfeit Only \$200.00 Was Just and Reasonable

The district court, upon consideration of the mitigating circumstances of appellant's fear of the "epidemic of virus X" (R. 5), determined pursuant to authority granted by R.S. 4596 (46 U.S.C. 701) and R.S. 4610 (46 U.S.C. 711) that the forfeiture of appellant's wages should be reduced to only \$200.00. The statute only declares prior established law. *Swain v. Howland*, (D. Mass., 1858) 23 Fed. Cas. No. 13,661. The trial court's discretion should not be hampered.

In view of the very slight justification furnished by the circumstances, it appears that the court below in reducing the penalty to the equivalent of a small fine was un-

usually generous. Since appellant had already collected all of his wages except \$353.86, it would seem that a total forfeiture ought to have been decreed. Certainly better causes for abandoning his employment have none the less cost other seamen larger sums. See e.g. *In re Murphy, supra*; *In re Magdaloyo, supra*.

CONCLUSION

For the reasons stated, it is respectfully submitted that Alaska Transportation Company should be dismissed, the United States substituted as respondent-appellee, and the order of the district court forfeiting \$200.00 to the United States affirmed.

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APPENDIX A

Statutes Involved

R. S. 4596 (as amended, 46 U.S.C. 701), derived from Section 51 of the 1872 Act, *infra*, p. 25, and Section 243 of the British Act, *infra*, p. 28, provides in pertinent part:

Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses, he shall be punished as follows:

First. For desertion, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned.

R. S. 4597 (as amended, 46 U.S.C. 702), derived from Section 52 of the 1872 Act, *infra*, p. 25, and Section 244 of the British Act, *infra*, p. 28, provides:

Upon the commission of any of the offenses enumerated in section 701 of this title an entry thereof shall be made in the official log book on the day on which the offense was committed, and shall be signed by the master and by the mate or one of the crew; and the offender, if still in the vessel, shall, before her next arrival at any port, or, if she is at the time in port, before her departure therefrom, be furnished with a copy of such entry, and have the same read over distinctly and audibly to him, and may thereupon make such a reply thereto as he thinks fit; and a statement that a copy of the entry has been so furnished, or the same has been so read over, together with his reply, if any, made by the offender, shall likewise be entered and signed in the same manner. In any subsequent legal proceedings the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof the court hearing the case may, at its discretion, refuse to receive evidence of the offense.

R. S. 4290 (as amended, 46 U.S.C. 201), derived from Section 58 of the 1872 Act, *infra*, p. 26, and Section 282 of the British Act, *infra*, p. 30, provides in pertinent part:

Every vessel making voyages from a port in the United States to any foreign port, or, being of the burden of seventy-five tons or upward, from a port on the Atlantic to a port on the Pacific, or vice versa, shall have an official log book; and every master of such

vessel shall make, or cause to be made therein, entries of the following matters, that is to say:

* * * * *

Second. Every offense committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, together with such statement concerning the reading over such entry, and concerning the reply, if any, made to the charge, as is required by the provisions of section 702.

* * * * *

Ninth. The name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner, and cause thereof.

R. S. 4291 (46 U.S.C. 202), derived from Section 59 of the 1872 Act, *infra*, p. 27, and Section 281 of the British Act, *infra*, p. 30, provides:

Every entry required to be made in the official log book shall be signed by the master and by the mate, or some other one of the crew, and every entry in the official log book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as the occurrence to which it relates, shall be made and dated so as to show the date of the occurrence, and of the entry respecting it; and in no case shall any entry therein, in respect of any occurrence happening previously to the arrival of the vessel at her final port, be made more than twenty-four hours after such arrival.

R. S. 4292 (46 U.S.C. 203), derived from Section 60 of the 1872 Act, *infra*, p. 27, provides:

If in any case the official log book is not kept in the manner required, or if any entry directed to be made in any such log book is not made at the time and in the manner directed, the master shall, for each such offense, be liable to a penalty of not more than \$25; and every person who makes, or procures to be made, or assists in making, any entry in any official log book in respect of any occurrence happening previously to the arrival of the vessel at her final port of discharge, more than twenty-four hours after such arrival, shall,

for each offense, be liable to a penalty of not more than \$150.

Title 28 U.S.C. 1732 (Compare Section 250 of the British Act, *infra*, p. 29), provides:

In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.

The term "business," as used in this section, includes business, profession, occupation, and calling of every kind.

R. S. 4604, as amended (cf. 46 U.S.C. 706), derived from Section 55 of the 1872 Act, *infra*, p. 26, and Section 253 of the British Act, *infra*, p. 29, provides:

All clothes, effects, and wages which, under the provisions of this title, are forfeited for desertion, shall be applied, in the first instance, in payment of the expenses occasioned by such desertion, to the master or owner of the vessel from which the desertion has taken place, and the balance, if any, shall be paid by the master or owner to any shipping commissioner resident at the port at which the voyage of such vessel terminates; and the shipping commissioner shall account for and pay over such balance to the judge of the district court within one month after the commissioner receives the same, to be disposed of by him in the same manner as is prescribed for the disposal of the money, effects, and wages of deceased seamen. Whenever any master or owner neglects or refuses to pay over to the shipping commissioner such balance, he shall be liable to a penalty of double the amount thereof, recoverable by the commissioner in the same manner that seamen's wages are recovered. In all

other cases of forfeiture of wages, the forfeiture shall be for the benefit of the master or owner by whom the wages are payable.

R. S. 4545 (as amended, 46 U.S.C. 628), derived from Section 50 of the 1872 Act, *infra*, p. 25, provides:

A district court, in its discretion, may at any time direct the sale of the whole or any part of the effects of a deceased seaman or apprentice, which it has received, and shall hold the proceeds of such sale as the wages of deceased seamen are held. When no claim to the wages or effects or proceeds of the sale of the effects of a deceased seaman or apprentice, received by a district court, is substantiated within six years after the receipt thereof by the court, it shall be in the absolute discretion of the court, if any subsequent claim is made, either to allow or refuse the same. Such courts shall, from time to time, pay any moneys arising from the unclaimed wages and effects of deceased seamen, which in their opinion it is not necessary to retain for the purpose of satisfying claims, into the Treasury of the United States, and such moneys shall form a fund for, and be appropriated to, the relief of sick and disabled and destitute seamen belonging to the United States merchant marine service.

R. S. 4610, as amended (cf. 46 U.S.C. 711) derived from Section 64 of the 1872 Act, *infra*, p. 27, provides in pertinent part:

* * * *Provided always*, That it shall be lawful for the court before which any proceeding shall be instituted for the recovery of any pecuniary penalty imposed by this Act to mitigate or reduce such penalty as to such court shall appear just and reasonable; but no such penalty shall be reduced to less than one-third of its original amount: * * *

APPENDIX B

Prior American Statutes

Merchant Seamen's Act of July 20, 1790, c. 29, 1 Stat. 131, 133, provides:

SEC. 5. *And be it [further] enacted*, That if any seaman or mariner, who shall have subscribed such contract as is herein before described, shall absent himself from

on board the ship or vessel in which he shall so have shipped, without leave of the master or officer commanding on board; and the mate, or other officer having charge of the log-book, shall make an entry therein of the name of such seaman or mariner, on the day on which he shall so absent himself, and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all the wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owners of the ship or vessel, and moreover shall be liable to pay to him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place, and such damages shall be recovered with costs, in any court or before any justice or justices having jurisdiction of the recovery of debts to the value of ten dollars or upwards.

Diplomatic and Consular Act of August 18, 1856, c. 127, 11 Stat. 52, 62, provides:

SEC. 25. *And be it further enacted*, That whenever any seaman or mariner of any vessel of the United States shall desert such vessel, the master or commander of such vessel shall note the fact and date of such desertion on the list of the crew, and the same shall be officially authenticated at the port or place of the consulate or commercial agency first visited by such vessel after such desertion, if such desertion shall have occurred in a foreign country, or if in such case such vessel shall not visit any place where there shall be any consulate or commercial agency before her return to the United States, or the desertion shall have occurred in this country, the fact and time of such desertion shall be officially authenticated before a notary public immediately at the first port or place where such vessel shall arrive after such desertion; and all wages that may be due to such seaman or mariner, and whatever interest he may have in the cargo of such vessel, shall be forfeited to and become the property of the United States, and paid over for their use to the collector of the port where the crew

of such vessel are accounted for as soon as the same can be ascertained; first deducting therefrom any expense which may necessarily have been incurred on account of such vessel in consequence of such desertion; and in settling the account of such wages or interest no allowance or deduction shall be made except for moneys actually paid, or goods at a fair price supplied, or expenses incurred to, or for such seaman or mariner, any receipt or voucher from, or arrangement with such seaman or mariner, to the contrary notwithstanding.

Shipping Commissioner's Act of June 7, 1872, c. 322, 17 Stat. 262, provides in pertinent part:

SEC. 50. That in cases of wages or effects of deceased seamen or apprentices received by the circuit courts, to which no claim is substantiated within six years after the receipt thereof by any of the said courts, it shall be in the absolute discretion of any of such courts, if any subsequent claim is made, either to allow or refuse the same; and each of the respective courts shall, from time to time, pay any moneys arising from the unclaimed wages and effects of deceased seamen, which, in the opinion of such court, it is not necessary to retain for the purpose of satisfying claims, into the treasury of the United States, which moneys shall form a fund for, and be appropriated to, the relief of sick and disabled and destitute seamen belonging to the United States merchant marine service.

SEC. 51. That whenever any seaman who has been lawfully engaged, or any apprentice to the sea service, commits any of the following offences, he shall be liable to be punished as follows, that is to say: first, for desertion, he shall be liable to imprisonment for any period not exceeding three months, and also to forfeit all or any part of the clothes or effects he leaves on board, and all or any part of the wages or emoluments which he has then earned; * * *

SEC. 52. That upon the commission of any of the offences enumerated in the last preceding section, an entry thereof shall be made in the official log-book, and shall be signed by the master, and also by the mate or one of the crew; and the offender, if still in the ship, shall, before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry,

or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished or that the same has been so read over as aforesaid, and the reply (if any) made by the offender, shall likewise be entered and signed in manner aforesaid; and in any subsequent legal proceedings the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof, the court hearing the case may, at its discretion, refuse to receive evidence of the offence.

* * * * *

SEC. 55. That all clothes, effects, and wages which, under the provisions of this act, are forfeited for desertion, shall be applied, in the first instance, in payment of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place, and the balance (if any) shall be paid by the master or owner to any shipping-commissioner resident at the port at which the voyage of such ship terminates; and the shipping-commissioner shall account to and pay over such balance to the judge of the circuit court within one month after said commissioner receives the same, to be disposed of by him in the same manner as is hereinbefore provided for the disposal of the money, effects, and wages of deceased seamen; in all other cases of forfeiture of wages, under the provisions hereinbefore contained, the forfeiture shall be for the benefit of the master or owner by whom the wages are payable; and in case any master or owner neglects or refuses to pay over to the shipping-commissioner such balance aforesaid, he shall incur a penalty of double the amount of such balance, which shall be recoverable by the commissioner in the same manner that seamen's wages are recovered.

* * * * *

SEC. 58. That every ship making voyages as described in section twelve of this act shall have an "official log-book;" and every master of such ship shall make, or cause to be made therein, entries of the following matters, that is to say: First, every legal conviction of any member of his crew, and the punishment inflicted; secondly, every offence committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, together with such statement concerning

the reading over such entry, and concerning the reply, if any, made to the charge, as hereinbefore required; * * * ninthly, the name of every seaman or apprentice who ceases to be a member of the crew otherwise than by death, with the place, time, manner, and cause thereof; * * *

SEC. 59. That every entry hereby required to be made in the official log-book shall be signed by the master and by the mate, or some other one of the crew, and every entry in the official log-book shall be made as soon as possible after the occurrence to which it relates, and, if not made on the same day as the occurrence to which it relates, shall be made and dated so as to show the date of the occurrence, and of the entry respecting it; and in no case shall any entry therein in respect of any occurrence happening previously to the arrival of the ship at her final port be made more than twenty-four hours after such arrival.

SEC. 60. That if in any case the official log-book is not kept in the manner hereby required, or if any entry hereby directed to be made in any such log-book is not made at the time and in the manner hereby directed, the master shall, for each such offence, incur a penalty not exceeding twenty-five dollars; and every person who makes, or procures to be made, or assists in making, any entry in any official log-book in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge, more than twenty-four hours after such arrival, shall, for each offence, incur a penalty not exceeding one hundred and fifty dollars.

* * * * *

SEC. 64. That all penalties and forfeitures imposed by this act, and for the recovery whereof no specific mode is hereinbefore provided, shall and may be recovered with costs, either in any circuit court of the United States, at the suit of any district attorney of the United States, * * * *Provided always*, That it shall be lawful for the court before which any proceeding shall be instituted for the recovery of any pecuniary penalty imposed by this act, to mitigate or reduce such penalty as to such court shall appear just and reasonable; but no such penalty shall be reduced to less than one-third of its original amount: * * *

British Merchant Shipping Act

The Merchant Shipping Act, 1854, 17 & 18 Viet., c. 104, provides in pertinent part:

243. Whenever any Seaman who has been lawfully engaged or any Apprentice to the Sea Service commits any of the following Offences he shall be liable to be punished summarily as follows; (that is to say,)

(1.) For Desertion he shall be liable to Imprisonment for any Period not exceeding Twelve Weeks, with or without Hard Labour, and also to forfeit all or any Part of the Clothes and Effects he leaves on board, and all or any Part of the Wages or Emoluments which he has then earned, and also, if such Desertion takes place abroad, at the Discretion of the Court, to forfeit all or any Part of the Wages or Emoluments he may earn in any other Ship in which he may be employed until his next Return to the United Kingdom, and to satisfy any Excess of Wages paid by the Master or Owner of the Ship from which he deserts to any Substitute engaged in his Place at a higher Rate of Wages than the Rate stipulated to be paid to him:

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244. Upon the Commission of any of the Offences enumerated in the last preceding Section an Entry thereof shall be made in the official Log Book, and shall be signed by the Master and also by the Mate or One of the Crew; and the Offender, if still in the Ship, shall before the next subsequent Arrival of the Ship at any Port, or if she is at the Time in Port, before her Departure therefrom, either be furnished with a Copy of such Entry or have the same read over distinctly and audibly to him, and may thereupon make such Reply thereto as he thinks fit; and a Statement that a Copy of the said Entry has been so furnished, or that the same has been so read over as aforesaid, and the Reply (if any) made by the Offender, shall likewise be entered and signed in manner aforesaid; and in any subsequent legal Proceeding the Entries herein-before required shall, if practicable, be produced or proved, and in

default of such Production or Proof the Court hearing the Case may, at its Discretion, refuse to receive Evidence of the Offence.

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250. Whenever a Question arises whether the Wages of any Seaman or Apprentice are forfeited for Desertion, it shall be sufficient for the Party insisting on the Forfeiture to show that such Seaman or Apprentice was duly engaged in or that he belonged to the Ship from which he is alleged to have deserted, and that he quitted such Ship before the Completion of the Voyage or Engagement, or if such Voyage was to terminate in the United Kingdom and the Ship has not returned, that he is absent from her, and that an Entry of the Desertion has been duly made in the official Log Book; and thereupon the Desertion shall, so far as relates to any Forfeiture of Wages or Emoluments under the Provisions herein-before contained, be deemed to be proved, unless the Seaman or Apprentice can produce a proper Certificate of Discharge, or can otherwise show to the Satisfaction of the Court that he had sufficient Reasons for leaving his Ship.

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253. All Clothes, Effects, Wages, and Emoluments which under the Provisions herein-before contained are forfeited for Desertion shall be applied in the first instance in or towards the Reimbursement of the Expenses occasioned by such Desertion to the Master or Owner of the Ship from which the Desertion has taken place; and may, if earned subsequently to the Desertion, be recovered by such Master, or by the Owner or his Agent, in the same Manner as the Deserter might have recovered the same if they had not been forfeited; and in any legal Proceeding relating to such Wages the Court may order the same to be paid accordingly; and subject to such Reimbursement the same shall be paid into the Receipt of Her Majesty's Exchequer in such Manner as the Treasury may direct, and shall be carried to and form Part of the Consolidated Fund of the United Kingdom; and in all other Cases of Forfeiture of Wages under the Provisions herein-before contained the Forfeiture shall, in the Absence of any specific Di-

rections to the contrary, be for the Benefit of the Master or Owner by whom the Wages are payable.

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280. The Board of Trade shall sanction Forms of Official Log Books, which may be different for different Classes of Ships, so that each such Form contains Blanks for the Entries herein-after required; and an Official Log of every Ship (except Ships employed exclusively in trading between Ports on the Coasts of the United Kingdom) shall be kept in the appropriate sanctioned Form; and such Official Log may, at the Discretion of the Master or Owner, either be kept distinct from the ordinary Ship's Log or united therewith, so that in all Cases all the Blanks in the Official Log be duly filled up.

281. Every Entry in every Official Log shall be made as soon as possible after the Occurrence to which it relates, and if not made on the same Day as the Occurrence to which it relates, shall be made and dated so as to show the Date of the Occurrence and of the Entry respecting it; and in no Case shall any Entry therein in respect of any Occurrence happening previously to the Arrival of the Ship at her final Port of Discharge be made more than Twenty-four Hours after such Arrival.

282. Every Master of a Ship for which an Official Log Book is hereby required shall make or cause to be made therein Entries of the following Matters; (that is to say,)

(1.) Every legal Conviction of any Member of his Crew, and the Punishment inflicted:

(2.) Every Offence committed by any Member of his Crew for which it is intended to prosecute, or to enforce a Forfeiture, or to exact a Fine, together with such Statement concerning the reading over such Entry, and concerning the Reply (if any) made to the Charge, as herein-before required:

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(9.) The Name of every Seaman or Apprentice who ceases to be a Member of the Crew, otherwise than by

Death, with the Place, Time, Manner, and Cause thereof:

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285. All Entries made in any Official Log Book as herein-before directed shall be received in Evidence in any Proceeding in any Court of Justice, subject to all just Exceptions.

